

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLACKWATER SECURITY CONSULTING,
LLC, a Delaware Limited Liability Company; and
BLACKWATER LODGE AND TRAINING
CENTER, INC., a Delaware Corporation,

Plaintiffs,

v.

WESTCHESTER SURPLUS LINES INSURANCE
COMPANY, a Georgia Corporation; EVANSTON
INSURANCE COMPANY, an Illinois Corporation;
FIDELITY AND CASUALTY COMPANY OF
NEW YORK, a South Carolina Corporation; and
LIBERTY INSURANCE UNDERWRITERS, a
Massachusetts Corporation,

Defendants.

CIVIL ACTION

NO. 05-CV-06020 (PBT)

**BRIEF IN SUPPORT OF LIBERTY INTERNATIONAL UNDERWRITERS' MOTION
TO STRIKE THE SUR REPLY OF PLAINTIFFS TO THE MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF LIBERTY INTERNATIONAL UNDERWRITERS**

John C. Sullivan, Esquire
Pa. I.D. No. 32262
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 587-1000
*Attorneys for Defendant, Liberty International
Underwriters improperly named as Liberty
Insurance Underwriters*

This brief is submitted on behalf of Defendant, Liberty International Underwriters (“Liberty”) in support of its Motion to Strike the Sur Reply of Plaintiffs, Blackwater Security Consulting, LLC and Blackwater Security Training Center, Inc. (“Blackwater”) (Dkt. No. 70) to the Reply Brief of Liberty (Dkt. No. 62) filed in Support of the Motion for Summary Judgment of Liberty (Dkt. No. 55) that Blackwater is not entitled to insurance coverage for the underlying actions pursuant to the unambiguous War/Terrorism exclusion contained in commercial umbrella insurance policy, no. LQ1-B71-200233-014 (“Liberty policy”).

Blackwater’s Sur Reply brief (Dkt. No. 70) should be struck. It was filed in an untimely manner, twenty three days after Liberty’s Reply Brief. It was filed contrary to Judge Tucker’s procedures, which do not allow for Sur Reply briefs. It was filed without the permission of this Court. Moreover, it was filed without containing any new legal argument, instead relying on the same patently incorrect legal argument set forth in its Response (Dkt. No. 61.)

It is anticipated that Blackwater will argue that the “Stipulation For Extension Of Time In Connection With Summary Judgment Motion” (“Stipulation”) (Dkt. No. 56) allowed Blackwater to file a Sur Reply brief. Any such argument is insupportable. Blackwater’s own filing practice in which it filed its Response to Liberty’s summary judgment motion within the time frame of Judge Tucker’s procedures and outside of the deadlines established in the Stipulation makes it clear that Blackwater does not think the Stipulation applies to Liberty’s summary judgment motion. Moreover, and more importantly, the Stipulation clearly reads that it only applies to “Plaintiffs’ Motion for Summary Judgment.” The Stipulation clearly applies only to the briefing deadlines for the three summary judgment motions filed by Blackwater against Defendant Westchester Surplus Lines Insurance (“Westchester”), Defendant Evanston Insurance Company (“Evanston”) and Defendant Continental Insurance Company (“Continental”). Thus,

Blackwater cannot rely on the Stipulation as justification for its untimely, improper, patently wrong and contradicted Sur Reply brief. Therefore, Blackwater's Sur Reply Brief should be struck.

For all of the foregoing reasons, this Court should grant Liberty International Underwriters' Motion to Strike the Sur Reply of Plaintiffs, Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc. to the Reply Brief of Defendant Liberty International Underwriters filed in Support to Motion for Summary Judgment of Liberty International Underwriters.

Dated: October 5, 2007

POST & SCHELL, P.C.

By: /s/ John C. Sullivan
JOHN C. SULLIVAN, ESQUIRE
Attorney ID # 32262
Signature Validation Code: JCS7648
CHRISTOPHER J. TELLNER, ESQUIRE
Attorney ID # 204204
Signature Validation Code: CJT6757
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
(215) 587-1000
*Attorneys for Defendant,
Liberty International Underwriters
improperly named as Liberty Insurance
Underwriters*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Strike the Sur Reply Brief of Plaintiffs and supporting Memorandum of Law of Liberty International Underwriters was served on this 5th day of October 2007, upon all counsel of record via electronic filing and/or First-Class Mail, postage prepaid:

Dennis J. Valenza, Esquire
Carol C. Carty, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103

Howard T. Weir, III
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004

Francis Deasey, Esquire
James W. Daly, Esquire
Michael F. Schleigh, Esquire
DEASEY, MAHONEY & BENDER, LTD.
1800 John F. Kennedy Boulevard, Ste. 1300
Philadelphia, PA 19103

Francis P. Burns, III, Esquire
LAVIN, O'NEIL, RICCI, CEDRONE, &
DISIPIO
190 North Independence Mall West
6th and Race Streets
Ste. 500
Philadelphia, PA 19106

L.D. Simmons, II, Esquire
Brian A. Kahn, Esquire
HELMS MULLISS & WICKER
201 North Tryon Street
Charlotte, North Carolina 28231

Nicole J. Rosenblum, Esquire
DLA PIPER RUDNICK GRAY CARY
LLP
One Liberty Place
1650 Market Street
Suite 4900
Philadelphia, PA 19103

/s/ Christopher J. Tellner
CHRISTOPHER J. TELLNER, ESQUIRE